

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
November 12, 2020**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Katherine Noel, chair; Corinne Finnerty; Sue Anne Gilroy; Rafael Sanchez; and Kenneth Todd. Staff present included Lori Torres, Inspector General; Jennifer Cooper, State Ethics Director; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Kelly Elliott, Staff Attorney, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Amber Nicole Ying, Special Counsel/Director and Ethics Officer, Compliance and Ethics, Department of Revenue; Deana Smith, Ethics Officer, Indiana State Department of Health; Ed Feigenbaum, Indiana Legislative Insight; Kathleen Mills, Ethics Officer, Indiana Department of Environmental Management; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library; Latosha N. Higgins, Managing Attorney/Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance & Ethics Specialist, Indiana Department of Revenue; Ed Hamilton, former Engineering Director, Ports of Indiana; Peggy Welch, Chief Advocacy Officer, Family and Social Services Administration; Christopher Drapeau, State Suicide Prevention Director, Family and Social Services Administration; Tara Morse, IN211 Executive Director, Family and Social Services Administration; Jaimie Ferren, Interim State Director of Indiana 211 Partnership, Family and Social Services Administration; Rachel Russel, Ethics Officer, Department of Child Services; Christine Macdonald, Internal Affairs Officer, Department of Child Services; Bill Anthony, Deputy Attorney General, Office of the Attorney General; Dr. Jerry Sheward, Chief Medical Officer of the Indiana State Psychiatric Hospital Network, Family and Social Services Administration; Beth Green, General Counsel & Ethics Officer, Indiana Department of Workforce Development; and Ted Cotterill, General Counsel, Management Performance Hub.

II. Adoption of Agenda and Approval of Minutes

Commissioner Sanchez moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed (5-0).

Commissioner Gilroy moved to approve the Minutes of the October 8, 2020 Commission Meeting and Commissioner Todd seconded the motion which passed (5-0).

III. Inspector General's Quarterly Report

Inspector General Lori Torres presented a report on the third quarter of 2020. 50 Informal Advisory Opinions were issued in Q3 (compared to 40 issued in Q2 and 74 in Q3 of 2019). There were 97 requests for investigations in Q3 (compared to 113 in Q2 and 61 in Q3 of 2019). Eight (8) new investigations were opened by OIG in Q3 (compared to 9 in Q2 and 7 in Q3 2019). 18 investigations were closed by OIG in Q3 (compared to 15 in Q2 and 15 in Q3 2019). 16 of 18 closed case reports are published on the website.

Regarding KPI's for Q3:

- KPI #1 - Number of informal advisory opinions ("IAO's) requested: **53** (3 withdrawn or no jurisdiction)
- KPI #2 - Average number of business days to provide an IAO: **1.38**
- KPI #3 - Number of recommendations made to reduce waste, inefficiency, fraud and improve integrity: **10 recommendations in 4 published reports and 1 confidential report.**

She went on to report that the 2020 Legal and Ethics Conference will be a Teams Live Event on November 19, 2020 from 1:00 – 4:30p.m. with 3 hours of CLE offered. There will be three panel sessions and free registration is required. A registration link is available on the OIG website.

Finally, Inspector General Torres reported an update regarding COVID-19 and how the OIG office is handling the issue. Like most state agencies, OIG has a hybrid work schedule where everyone is physically in our office each week and staff rotates so that there is generally 25 – 45% of staff physically present in the office every day. The Indiana State Library, which houses the OIG office, is currently open to the public by appointment. Also, this SEC meeting is the sixth virtual meeting being held since the pandemic started and will continue for the foreseeable future depending on Governor Holcomb's executive orders and Chairwoman Noel's directives.

IV. Request for Formal Advisory Opinion

2020-FAO-011

Dr. Jerry Sheward, Chief Medical Officer of the Indiana State Psychiatric Hospital Network

Latosha N. Higgins, Managing Attorney and Ethics Officer
Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Dr. Jerry Sheward, Superintendent and Chief Medical Officer of the NeuroDiagnostic Institute (NDI) and Chief Medical Officer of the Indiana State Psychiatric Hospital Network.

Ms. Higgins is requesting an opinion from the Commission addressing whether it would be a conflict of interests for Dr. Sheward to obtain outside employment with Meridian Health Services (Meridian). In this outside employment with Meridian, Dr. Sheward would see patients for four to six hours a week. This position would commence on January 1, 2021.

Dr. Sheward's role with the State of Indiana began in 2016 as FSSA's Chief Medical Officer, primarily focused on design, construction and activation of the NDI with a secondary focus on State Psychiatric Hospital Network integration as chair of the medical directors committee. He is also the executive sponsor of the Cerner electronic medical record project for the State psychiatric hospitals. In July of 2019, Dr. Sheward's primary role expanded to Superintendent and Chief Medical Officer of NDI.

The scope of administrative responsibilities associated with these positions have and continue to preclude Dr. Sheward from attending directly to patients at the state psychiatric hospitals. His schedule of meetings associated with NDI operations, network operations and electronic medical records does not allow enough time for him to attend to patients.

In 2016 ([16-I-6](#)), the Commission granted Dr. Sheward permission to pursue a small number of consulting hours with Aspire Indiana (Aspire) in their Anderson office. His role there has been to provide psychiatric diagnostic evaluations and medication management consultation. These services are limited to one afternoon per week for four to six hours with no ongoing responsibility in between these afternoon sessions. Issues that cannot wait until his scheduled hours are handled by other clinicians at Aspire. Dr. Sheward makes up his 37.5 hours work-week requirement by working longer hours the remaining four days of the week. Additionally, Dr. Sheward asserts that he is always available by phone for emergency issues at NDI, even while consulting.

Dr. Sheward's arrangement with Aspire will terminate mid-December. As such, he is interested in pursuing a new opportunity with Meridian. The scope of his work with Meridian would be similar to what he is doing now with Aspire, with no ongoing responsibility between consulting sessions that would interfere with his primary state employment. Meridian, like Aspire, would provide malpractice coverage for his work. The location(s) of the consulting would be Anderson, Indianapolis or some combination of the two to be determined.

Meridian provides a full range of mental health services to adults, children and adolescents, including behavioral and addiction treatment programs. Dr. Sheward will be paid on an hourly basis and will not serve in a supervisory or leadership role. He will not charge patients nor will he bill insurance. Rather, Meridian will bill insurance and Medicaid.

Meridian has several state contracts, including contracts with different FSSA divisions. Ms. Higgins has provided that, to the best of her and Dr. Sheward's knowledge, no part of Dr. Sheward's salary from Meridian would be derived from any of their state contracts.

Dr. Sheward's position within FSSA does not impact any contractual or financial responsibilities between FSSA and Meridian. Furthermore, his responsibilities do not include the ability to make decisions that directly impact Meridian or its patients. This opportunity essentially continues the work he has been doing since 2016 at different locations with a different entity. This consulting will allow him to continue to maintain clinical proficiency while making a small contribution to addressing the psychiatric shortage among underserved populations in Indiana.

The analysis stated the following:

Ms. Higgins' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Sheward is analyzed below.

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his official duties that his ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities since these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Based on the information and opinion provided by Ms. Higgins, the Commission finds that Dr. Sheward's employment at Meridian would not create a conflict under this provision. Specifically, Dr. Sheward's responsibilities with Meridian would not be inherently incompatible with his FSSA responsibilities nor would they require his recusal from matters that are critical to the performance of his state duties.

At Meridian, Dr. Sheward would not be serving in a leadership or supervisory role. His role at Meridian would be limited to seeing patients for four to six hours a week, and he would be paid on an hourly basis. The Commission confirmed that Dr. Sheward would not be required to disclose confidential information to which he may have access by virtue of his state employment in his outside position with Meridian.

Further, nothing in the information presented suggests that Dr. Sheward would use or attempt to use his state position to secure any unwarranted privileges or exemptions. Dr. Sheward must continue to ensure he does not use or attempt to use his official FSSA position to secure any unwarranted privileges or exemptions.

The Commission finds that Dr. Sheward's outside employment with Meridian would not create a conflict of interests for him under IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Sheward from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Sheward from participating in any decisions or votes, or matters related to such decisions or votes, in which Meridian would have a financial interest in the outcome.

According to the information provided by Ms. Higgins, Dr. Sheward is not in a position at FSSA to impact any contractual or financial responsibilities between FSSA and Meridian. Furthermore, his responsibilities at FSSA do not include the ability to make decisions that directly impact Meridian or its patients. Although Meridian does have contracts with FSSA and other state agencies, Dr. Sheward is not involved in these contracts and does not participate in any decisions related to these contracts.

The Commission finds that Dr. Sheward does not have an identified potential conflict of interests at this time; however, if a potential conflict of interests is identified in the future, Dr. Sheward must meet the disclosure and notification requirements in IC 4-2-6-9(b).

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between the State and a third party. This prohibition, however, does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Higgins provides that FSSA, as well as other state agencies, have active contracts with Meridian. Based on the information provided, Dr. Sheward would not have contracting authority for any state agencies, including FSSA, that may contract with Meridian, but he would have a financial interest in Meridian's contracts if any part of his salary from Meridian would be paid from funding received through state contracts. According to Ms. Higgins, Dr. Sheward would be paid on an hourly basis and, to the best of her and Dr. Sheward's knowledge, his salary would not be derived from state contract funds.

So long as his salary would not be derived from state contract funds, Dr. Sheward would not have a financial interest in these contracts, and the Commission finds that Dr. Sheward would not have a conflict of interests under this rule.

Also, so long as Meridian is not compensating Dr. Sheward with any funds from a state contract, the criminal conflict of interests statute (IC 35-44.1-1-4) is not implicated. To ensure Dr. Sheward

complies with both IC 4-2-6-10.5 and the criminal conflict of interests statute, the Commission recommends that Dr. Sheward's employment contract with Meridian include a provision stating that his salary will not be derived from any state contracts.

D. Confidential information

Dr. Sheward is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Dr. Sheward from accepting any compensation from any employment, transaction or investment which is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as Meridian. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent Dr. Sheward is exposed to or has access to such confidential information in his position with FSSA, he is prohibited not only from divulging that information but from ever using it to benefit any person, including Meridian, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Dr. Sheward from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Dr. Sheward from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

The Commission confirmed that Dr. Sheward understands that he may not use state time to work at his outside position. Dr. Sheward confirmed that he will be able to meet the 37.5-hour state work week requirement despite seeing patients a few hours per week.

To the extent that Dr. Sheward observes these provisions regarding his outside employment activities, his outside position would not violate these ethics laws.

Commissioner Todd moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion which passed (5-0).

V. Request for Formal Advisory Opinion

2020-FAO-012

Jaimie Ferren, Director of Contact Center Services/Interim Director for Indiana 211 Partnership, Inc.

Latosha N. Higgins, Managing Attorney and Ethics Officer

Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Jaimie Ferren, Director of Contact Center Services/Interim Director for Indiana 211 Partnership, Inc.

On August 5, 2020, Ms. Ferren interviewed for the position of Deputy Director of the Indiana 211 program (IN211) with FSSA and accepted an offer for employment on August 14, 2020. She received confirmation that the position was approved on October 15, 2020. She verbally accepted the position on October 30, 2020. FSSA is now seeking a formal advisory opinion regarding whether Ms. Ferren may serve in a volunteer capacity with Indiana 211 Partnership, Inc. while remaining employed with FSSA.

Through legislation, effective July 1, 2020, FSSA assumed the operations of IN211. Indiana 211 Partnership, Inc. offers a free service that connects individuals with help and answers regarding resources available in their community. The legislation did not require that FSSA take over Indiana 211 Partnership, Inc., which is the 501(c)(3) entity that previously operated IN211. Instead, FSSA contracted with Indiana 211 Partnership, Inc. to allow Indiana 211 Partnership, Inc. to continue to operate IN211 from July 1, 2020 through December 31, 2020. FSSA is expected to take over operations of the Indiana 211 program on January 1, 2021.

Under the arrangement FSSA has with Indiana 211 Partnership, Inc., Ms. Ferren, as an employee of Indiana 211 Partnership, Inc., accesses its bank account and then invoices FSSA for expenses, which FSSA then pays to Indiana 211 Partnership, Inc. Indiana 211 Partnership, Inc. uses the funds that FSSA provides to pay various entities for services and materials for which Indiana 211 Partnership, Inc. has existing contracts. Effective January 1, 2021, these contracts are expected to become FSSA contracts and all the Indiana 211 Partnership, Inc. employees will become FSSA employees.

Ms. Ferren plans to resign as an Indiana 211 Partnership, Inc. employee but would like to continue to serve as an officer for Indiana 211 Partnership, Inc. on a voluntary basis so that she can continue processing invoices for Indiana 211 Partnership, Inc. while it winds up its operations of the program. Ms. Ferren is not currently a voting member of the Indiana 211 Partnership, Inc. Board of Directors; rather she is the designee assigned to run operations, including the financials.

As background, Ms. Ferren was with United Way of Allen County as the Director of 211 for eight years. They were one of the call centers with whom Indiana 211 contracted to provide services. In October 2019, she was offered a position as Director of Contact Center Services with Indiana 211 Partnership, Inc., which made her responsible for center operations at both the Indianapolis and the Fort Wayne call centers. When the Director of Indiana 211 Partnership, Inc. left in December of 2019, Ms. Ferren became Co-Interim Director. In early July of 2020, she was designated as the sole Interim Director. She is currently the only person at an executive level within the organization. She believes it would be in everyone's best interest if she assisted Indiana 211 Partnership, Inc. on an ad-hoc basis until it is dissolved, likely by June 2021. Furthermore, she believes the legislation requires that Indiana 211

Partnership, Inc. have a designated director; therefore, she believes that her absence would be a hardship on the Indiana 211 Partnership, Inc. Board of Directors as it would have to employ a new director on a short-term basis. If it chose to pursue that option, she would still need to dedicate a significant amount of time to train that person.

As the Deputy Director for IN211, Ms. Ferren will report to the Executive Director of the 211 Division within FSSA. She will be responsible for working with the Executive Director to set up the infrastructure needed to operate IN211. She will assist in managing the day to day operations of the division, ensuring and improving performance, productivity and efficiency of operations. She will supervise key staff and assist the Executive Director in oversight of internal and external communication, special projects and improvement of the division's culture and public image. Additionally, she will assist with procurement activities and contract evaluations.

Ms. Ferren understands and agrees to comply with the ghost employment, use of state property and confidential information provisions of the Code. She also understands that she is not to use her FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly made available to similarly situated individuals outside state government. Furthermore, Ms. Ferren's future supervisor is prepared to implement a screen to ensure that she is not involved in any decisions or votes or other matters in which Indiana 211 Partnership, Inc. would have a financial interest. Ms. Ferren strongly believes that holding both positions would be in the best interest of FSSA to ensure the smooth transition of the program to FSSA.

The analysis stated the following:

Ms. Higgins' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Ms. Ferren is analyzed below.

A. Outside employment/professional activity

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of her official duties that her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Ms. Ferren would not be compensated by the Indiana 211 Partnership, Inc. for her volunteer service; accordingly, subsection (1) of this rule does not apply. Ms. Higgins provides that Ms.

Ferren understands she cannot disclose confidential information or use her state position to secure unwarranted privileges or exemption that are of substantial value and not properly made available to similarly situated individuals outside state government.

The Commission confirmed that Ms. Ferren would not be required to disclose confidential information to which she may have access by virtue of her state employment in her outside position with Indiana 211 Partnership, Inc. So long as she ensures that she will not use or attempt to use her state position to secure any unwarranted privileges or exemptions, Ms. Ferren would not violate this rule.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Ferren from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Ferren from participating in any decision or vote, or matter related to that decision or vote, if she has knowledge that a business organization with whom she is serving as an officer, director, trustee, partner, member or employee has a financial interest in the outcome.

Ms. Ferren will not be a paid employee of Indiana 211 Partnership, Inc., but she will be serving the organization on a volunteer basis. Accordingly, this rule would be triggered if Ms. Ferren participates in any matter related to a decision or vote that could financially impact Indiana 211 Partnership, Inc.

According to the information provided by Ms. Higgins, Ms. Ferren's supervisor is prepared to implement a screen to ensure that Ms. Ferren is not involved in any decisions or votes or related matters in which Indiana 211 Partnership, Inc. would have a financial interest in the outcome.

Ms. Higgins provides that FSSA and the Indiana 211 Partnership, Inc. are still two separate entities and FSSA does not operate the non-profit. FSSA has a contract with the non-profit that is set to expire in December 2020. FSSA pays invoices submitted by the non-profit according to the current contract terms but is otherwise not involved in the current wind down activities of the non-profit.

FSSA will screen Ms. Ferren from all decisions regarding and involvement in FSSA's contract with Indiana 211 Partnership, Inc. when she begins her employment with FSSA. This includes screening Ms. Ferren from any decisions or participation in the invoices submitted to FSSA by Indiana 211 Partnership, Inc.

Ms. Higgins further provides that Ms. Ferren's role at FSSA would not involve any participation in financial matters involving the non-profit. Once she commences employment at FSSA, Ms. Ferren's responsibilities will initially concern setting up the IN211 operations on the FSSA side, including setting up the required infrastructure needed for FSSA to be able to run the program and hiring and supervising FSSA staff; FSSA will have no need for Ms. Ferren to participate in any matters concerning the non-profit once she begins her new role at FSSA.

Accordingly, the Commission finds that Ms. Ferren would not have a potential conflict of interests under this rule once she begins her new role at FSSA, so long as her responsibilities do not include any participation in matters in which Indiana 211 Partnership, Inc. would have a financial interest.

C. Confidential information

Ms. Ferren is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Ms. Ferren from accepting any compensation from any employment, transaction or investment which is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as Indiana 211 Partnership, Inc. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Ms. Ferren is exposed to or has access to such confidential information in her position with FSSA, she is prohibited not only from divulging that information but from ever using it to benefit any person, including Indiana 211 Partnership, Inc., in any manner.

D. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Ms. Ferren from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Ms. Ferren from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

The Commission expressed concern over the perceived possibility of overlap of her two positions and determined that Ms. Ferren must be extra mindful of these rules and take precautions to ensure that she is not working on Indiana 211 Partnership, Inc. activities during her FSSA working hours or using any state resources while completing her volunteer work for Indiana 211 Partnership, Inc.

The Commission determined that Ms. Ferren should keep an accurate and detailed record (e.g. a log) of the time she spends volunteering with Indiana 211 Partnership, Inc. to minimize any appearance that she may be completing this work on state time and to minimize or eliminate any confusion as to which role she is fulfilling at any given time.

To the extent that Ms. Ferren observes these provisions regarding her outside professional activities, her outside position would not violate these ethics laws.

Commissioner Todd moved to approve the Commission's findings, and Commission Chair Noel seconded the motion which passed (3-2). [Yes Votes: Noel, Todd, and Sanchez. No Votes: Finnerty and Gilroy.]

VI. Request for Formal Advisory Opinion

2020-FAO-013

Dr. Christopher W. Drapeau, State Suicide Prevention Director

Latosha N. Higgins, Managing Attorney and Ethics Officer

Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Dr. Christopher W. Drapeau, the State Suicide Prevention Director for FSSA's Division of Mental Health and Addiction.

Ms. Higgins is requesting an opinion from the Commission addressing whether it would be a conflict of interests for Dr. Drapeau to continue his outside employment with a small private practice, Psych Consults, LLC, while employed at FSSA.

Dr. Drapeau joined FSSA on September 21, 2020. The role of State Suicide Prevention Director (Director) was legislatively mandated by House Enrolled Act 1430. As Director, Dr. Drapeau serves as both a regional suicide prevention specialist and oversees suicide prevention efforts on a statewide level. He is responsible for working with the Indiana Suicide Prevention Network Advisory Council and other state-level policy entities. Additionally, he is responsible for being a primary source for evidence-based suicide prevention strategies and serving as the leader for suicide prevention and early intervention efforts in Indiana communities. Furthermore, he is responsible for collaborating with local community prevention professionals to successfully educate key local stakeholders about suicide prevention and to engage them as part of community coalitions.

Prior to joining FSSA, Dr. Drapeau worked in a small private practice with Dr. Thomas Allen of Psych Consults, LLC counseling individuals. He would like to continue his private practice while working with FSSA. Dr. Drapeau plans to see no more than five clients a week, which translates to five to six hours a week. He would generally see clients on Wednesdays and Thursdays in the late afternoon/early evening (central time zone). This work schedule would still allow him to meet his 37.5-hour state work week requirement. He would like to continue with his private practice to maintain his clinical skills and his psychologist license and to help people locally who are seeking psychological services.

According to its website, Psych Consults, LLC was founded in 2007 by Dr. Thomas M. Allen. The practice provides services to children and adults and specializes in psychological testing and treatment. The practice treats individuals receiving Medicaid through FSSA. Dr. Drapeau primarily provides psychotherapy; however, he may also provide psychological assessment services on occasion. Psych Consults, LLC will pay Dr. Drapeau on an hourly basis, and he will not serve in a supervisory or leadership role. He will not directly charge patients nor will he bill insurance. The practice manager completes these tasks. Psych Consults, LLC will compensate

Dr. Drapeau via funds paid by insurance companies or clients who wish to pay out-of-pocket for psychological services.

Although Psych Consults, LLC is a Medicaid provider with FSSA, according to Ms. Higgins, Dr. Drapeau's position within FSSA does not impact any contractual or financial responsibilities between FSSA and Psych Consults, LLC and Dr. Drapeau is not involved in decisions regarding whether the practice is a Medicaid provider and how/if Medicaid is reimbursed. Furthermore, his responsibilities do not include the ability to make decisions that directly impact Psych Consults, LLC or its patients. As such, his employment with Psych Consults, LLC would not require recusal from his official responsibilities to the extent that his ability to perform them would be materially impaired, nor would he be required to use any confidential information in his employment with Psych Consults, LLC.

Dr. Drapeau understands that he is not to use his FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government. He also understands and agrees to abide by the ethics rules governing conflicts of interests, ghost employment, use of state property and confidential information.

The analysis stated the following:

Ms. Higgins' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Drapeau is analyzed below.

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his official duties that his ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities since these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Based on the information and opinion provided by Ms. Higgins, Dr. Drapeau's employment at Psych Consults, LLC would not create a conflict under this provision. Dr. Drapeau's role and responsibilities at Psych Consults, LLC would be very different from his role as Director, and it

does not appear that the positions would overlap in any meaningful way. Dr. Drapeau plans to see patients and provide psychological services at Psych Consults, LLC, for a few hours a week. He would not be in a supervisory or leadership role.

Accordingly, the Commission finds that Dr. Drapeau's responsibilities with Psych Consults, LLC would not be inherently incompatible with his FSSA responsibilities nor would they require his recusal from matters that are critical to the performance of his state duties.

Further, the Commission confirmed that Dr. Drapeau would not be required to disclose confidential information to which he may have access by virtue of his state employment in his outside position with Psych Consults, LLC.

Nothing in the information presented suggests that Dr. Drapeau would use or attempt to use his state position to secure any unwarranted privileges or exemptions, as Dr. Drapeau already worked for Psych Consults, LLC prior to joining FSSA. Dr. Drapeau must continue to ensure he does not use or attempt to use his official FSSA position to secure any unwarranted privileges or exemptions.

The Commission finds that Dr. Drapeau's outside employment opportunity with Psych Consults, LLC would not create a conflict of interests for him under IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Drapeau from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Drapeau from participating in any decisions or votes, or matters related to such decisions or votes, in which Psych Consults, LLC would have a financial interest in the outcome.

Although Psych Consults, LLC is a Medicaid provider with FSSA, Ms. Higgins provides that Dr. Drapeau is not in a position at FSSA to impact any contractual or financial responsibilities between FSSA and Psych Consults, LLC. Furthermore, he does not interact with Psych Consults, LCC in his state position, and his responsibilities do not include the ability to make decisions that directly impact Psych Consults, LLC or its patients.

The Commission finds that Dr. Drapeau does not have an identified potential conflict of interests at this time; however, if a potential conflict of interests is identified in the future, Ms. Higgins must ensure that Dr. Drapeau meets all the disclosure and notification requirements in IC 4-2-6-9(b). Mere recusal from matters that could create a potential conflict of interests would not be enough to satisfy the requirements.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency unless the employee can meet certain requirements. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between the state and a third party.

Ms. Higgins provides that Dr. Drapeau would be paid on an hourly basis for his work in seeing patients for Psych Consults, LLC and the practice would compensate him with funds from insurance companies or clients who wish to pay out-of-pocket for psychological services. Further, Ms. Higgins, confirmed that Dr. Drapeau will not be paid from any state contract or grant. Although Psych Consults receives Medicaid payments/reimbursements, these are not considered state contract or grant funds.

Accordingly, the Commission finds that Dr. Drapeau does not have a financial interest in a state contract.

D. Confidential information

Dr. Drapeau is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Dr. Drapeau from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as Psych Consults, LLC. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Dr. Drapeau is exposed to or has access to such confidential information in his position with FSSA, he is prohibited not only from divulging that information but from ever using it to benefit any person, including his outside employer, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Dr. Drapeau from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Dr. Drapeau from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

To the extent that Dr. Drapeau observes these provisions regarding his outside employment activities, his outside position with Psych Consults, LLC would not violate these ethics laws.

Commissioner Sanchez moved to approve the Commission's findings, and Commissioner Finnerty seconded the motion which passed (5-0).

VII. Consideration of 2021 Public Meeting Dates

State Ethics Director Jen Cooper provided proposed dates to the Commission for the 2021 State Ethics Commission Public Meeting Dates. The dates have previously been set on the second Thursday of each month automatically, but given the current circumstances created by the Covid-19 pandemic Inspector General Torres and Director Cooper found that it would be prudent to get input and approval from the Commission.

After discussion from the Commission, Commission Chair Noel moved for approval along with the proposed April meeting date to be pushed back one week to the third week of April due to scheduling conflicts. Commissioner Sanchez seconded the Chair's motion which passed (5-0).

The approved dates are as follows:

- January 21*
- February 11
- March 11
- April 15
- May 13
- June 10
- July 8
- August 12
- September 9
- October 14
- November 18**
- December 9

* third Thursday of the month due to scheduling conflict

**third Thursday of the month due to Veterans Day Holiday on November 11, 2021

VIII. Director's Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 22 informal advisory opinions with the majority of opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

Director Cooper also reported that the OIG will be holding the annual Legal & Ethics Conference on November 19, 2020 from 1:00-4:30 P.M. with 3 hours of CLE offered. There will be three panel sessions and details of each session are available on the Conference Agenda.

IX. Adjournment

Commissioner Sanchez moved to adjourn the public meeting of the State Ethics Commission and Commissioner Sanchez seconded the motion, which passed (5-0).

The public meeting adjourned at 11:10 a.m.